

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 265 of 1998

in

SPECIAL CIVIL APPLICATION No 356 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes : YES
2. To be referred to the Reporter or not? yes :
3. Whether Their Lordships wish to see the fair copy of the judgement? No : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : NO
5. Whether it is to be circulated to the Civil Judge? No :

AMBALAL S KUMBHAR

Versus

GUJARAT CO-OPERATIVE MARKETING FEDERATION LTD.

Appearance:

MR MC SHAH for Appellants
MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 28/06/1999

ORAL JUDGEMENT

This appeal is filed against the judgment and order

passed by the learned Single Judge in Special civil application No. 3561 of 1992 on February 10, 1998.

The appellants were employed by Gujarat Cooperative Marketing Federation Limited, ('Federation' for short). They were transferred. It is, however, an admitted fact that they did not obey orders of transfer passed against them and did not report for duty at the transferred station. They had made representations before the Federation. Though no proceedings were taken by the appellants and no interim relief against transfer was obtained from any competent court, the appellants flouted the orders of transfer and did not resume duty at the place of transfer. The matter, however, did not end there. It was the allegation of the authority that with a view to create an evidence that they were present at Ahmedabad office, the appellants had made certain unauthorised endorsements and tampered with the record and thereby committed serious misconduct. For that, both of them were placed under suspension and departmental proceedings were initiated against them. At the conclusion of the departmental inquiry, they were found guilty and were dismissed from service.

Being aggrieved by the order of dismissal, the workmen raised a dispute and the Presiding Officer of the Labour Court, Ahmedabad, in Reference (LCA) No. 631 of 1984 passed an award on June 28, 1991. While making the award, the Labour Court recorded an unequivocal finding that departmental inquiry held against the workmen was legal, proper and in consonance with law. The Labour court, however, observed that the charge which was levelled against the workmen that they had not reported for duty even after transfer could not be said to be of such a magnitude which required extreme punishment of dismissal. In exercise of powers under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), therefore, the Labour Court substituted penalty of dismissal into stoppage of two increments with permanent effect by directing their reinstatement. But the Labour Court also directed the Federation to pay full back wages to both the workmen.

Being aggrieved by the award passed by the Labour Court, the above petition came to be filed by the Federation. The learned Single Judge partly allowed the petition. In paras 9 and 10, the learned Single Judge observed :

"I am afraid, I cannot accept the contention

raised by Mr. Soni. After holding disciplinary proceedings both the workmen have been found guilty of not obeying the order of transfer and for tampering with the muster roll, i.e. the official record. The findings recorded by the Inquiry Officer have been upheld by the Labour court. Even after the completion of the disciplinary proceedings both the workmen were given opportunity to comply with the orders of transfer. However, neither of them availed of the said opportunity. Even the grounds mentioned by the concerned workmen have been found not to be genuine or justiciable. I am of the opinion that not obeying the order of transfer is certainly a misconduct which should invite punishment under the relevant rules. However, misconduct of tampering with the official record or falsifying the official record is far graver a misconduct. The Labour court while passing award in favour of the workmen has not taken into consideration the misconduct of tampering with/ falsifying the official records which has been proved against the workmen. Further, the workman were obstinate enough not to avail of further opportunity given to them under the notice dated 20.9.,1983. I am, therefore, of the view that the Labour court was not justified in holding that the punishment imposed upon the workmen was not commensurate with the guilt established against them. The Labour court having upheld the findings recorded by the inquiry officer ought not to have interfered with the punishment imposed upon the workmen. Further, in view of the judgments referred to hereinabove, the grant of back wage and continuity of service to the erring workmen is also not justiciable. The workmen could not have been rewarded by awarding back wages and continuity of service as has been done in the present case. In the circumstances, the impugned judgment and award of the labour court requires to be quashed and set aside. However, it cannot be ignored that in view of the refusal of interim relief by this court and confirmed by Supreme court both the workmen have been reinstated in service in due compliance with the order made by the Labour court. Mr. Joshi fairly concedes that nothing adverse has been recorded against these workmen during their service tenure from the date of reinstatement till date. In that view of the matter, I do not intend to interfere with the order of

reinstatement made by the Labour court. Since the Labour court has considered withholding of two increments with future effect to be the adequate punishment, I need not interfere with the same also.

The petition is, therefore, partly allowed. The award of the Labour court (Annexure F to the petition) insofar as it awards full back wages to the workmen with continuity in service is quashed and set aside. The order of reinstatement of the workmen in service and imposition of punishment of withholding of 2 increments with future effect is confirmed. The workmen shall refund the amount of back wages received by them under the interim orders of the Supreme court within a period of six months from today. The workmen may approach the society for grant of suitable installments if so desired. The period from the date of termination of service of the workmen till the date of reinstatement shall be treated as period spent on extra-ordinary leave without pay. Rule is made absolute accordingly. The respondents shall bear the costs of this petition."

The above order passed by the learned Single Judge is impugned in the present appeal.

Mr. M.C.Shah, learned counsel for the appellants raised several contentions. He submitted that no reasonable opportunity was afforded to the appellants when an inquiry was instituted against the appellants. He stated that necessary documents were not supplied to the delinquent even though they were demanded. Moreover, an opportunity to cross-examine witnesses was not afforded. According to Mr. Shah, the inquiry was thus vitiated and the findings cannot be said to be findings in the eye of law.

Apart from the fact that the said point was never raised before the learned Single Judge, the finding of the Labour Court is against the appellants. As observed by us hereinabove, in clear, unequivocal and express terms, the Labour Court held the inquiry to be legal, valid and in accordance with law. Once the said finding is recorded by the Labour Court, it cannot be said that the inquiry was vitiated. We, therefore, see no substance in this argument of Mr. Shah.

It was then contended that there was no misconduct on the

part of the appellants and the learned Single Judge has committed an error of law in going into that question. Mr. Shah submitted that the Labour Court has held that orders of transfer were passed against the appellants and in spite of such orders, the appellants did not resume duty. According to the Labour Court, therefore, at the most, there was some irregularity on the part of the appellants, but no misconduct can be said to have been committed by them. Considering the said fact, the Labour Court ordered reinstatement of the appellants by imposing lesser punishment and by awarding back wages. Learned counsel, therefore, submitted that the learned Single Judge exceeded his jurisdiction in interfering with the order of punishment passed by the Labour court.

We see no substance in the above argument as well. So far as misconduct of the appellants is concerned, after holding regular departmental inquiry, a finding was recorded by the authority that misconduct was established. Punishment of dismissal was, therefore, imposed on both of them. The Labour Court recorded a finding that the inquiry was legal and lawful. In the opinion of the Labour Court, however, the extreme penalty of dismissal was not uncalled for and the punishment was disproportionate. The Labour Court did not interfere with the finding that the appellants had tampered with the office record. Yet, the Labour Court awarded back wages. In our opinion, therefore, the learned Single Judge was justified in observing that when the misconduct of the appellants was established, they could not have been awarded back wages. By doing so, the learned Single Judge has not exceeded jurisdiction. That contention also, therefore, does not detain us.

Lastly, it was argued that it is in the discretion of the Labour Court to award appropriate punishment and the said power flows from the statutory provision under Section 11-A of the Act. It is, no doubt, true that Section 11-A enables Labour Court to alter punishment of discharge or dismissal to appropriate punishment in the facts and circumstances of the case if it is of the opinion that such discharge or dismissal is 'not justified'.

In the facts and circumstances of the instant case, however, it cannot be said that the order passed by the Labour Court was in consonance with the provisions of Section 11-A. The appellants were transferred but they did not report for duty. Even for that act, appropriate proceedings for imposing penalty could be taken against the appellants (vide Gujarat Electricity Board and another vs. Atmaram Poshani AIR 1989 SC 1433).

The matter, however, did not rest there. With a view to create presence at Ahmedabad office, the appellants played mischief with the office record and for such misconduct, they were placed under suspension, departmental inquiry was held against them wherein they were found guilty. Only thereafter, both of them were dismissed from service. It can be argued that in the light of the said finding whether reinstatement could have been ordered. In any case, when the Labour Court ordered reinstatement in service, that part of the award was not interfered with by the learned Single Judge. We are told that both the appellants are already reinstated in service. The learned Single Judge, however, was of the opinion that in the facts and circumstances of the case, they ought not to have been awarded back wages.

The question, therefore, is whether the learned Single Judge has committed an error of law and/or exceeded jurisdiction in interfering with the award of payment of back wages by the Labour court. In our considered opinion, in the light of the misconduct proved against the appellants, the Labour Court ought not to have awarded back wages and by setting aside that part of the award, the learned Single Judge has not committed any error of law and/or jurisdiction.

When the appellants did not resume duty in spite of orders of transfer, committed misconduct by creating evidence to show their presence at Ahmedabad office thereby playing mischief with official record and in the departmental inquiry which was held to be legal, valid and lawful, they were found guilty, the appellants ought not to have been awarded back wages.

For the reasons aforesaid, in our opinion, the learned Single Judge has not committed any error of law and/or jurisdiction in interfering with and setting aside that part of the award by which full back wages were granted to the appellants. The appellants, in our considered view, ought not to have been awarded back wages. Hence, by allowing the petition filed by the Federation in part, the learned Single Judge has not done any illegality.

Since we see no infirmity in the order passed by the learned Single Judge, LPA deserves to be dismissed and it is accordingly dismissed.

parekh

